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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
13

14 MICHAEL LAVIGNE, *et al.*,
15 Plaintiffs,
16 vs.
17 HERBALIFE LTD., *et al.*,
18 Defendants.

CASE NO. 2:18-cv-07480-JAK (MRWx)
[Related Case 2:13-cv-02488-BRO-RZ]

**DECLARATION OF JONATHAN M.
JACKSON IN SUPPORT OF
APPLICATION TO FILE
DOCUMENTS UNDER SEAL**

*[Filed concurrently with Declaration of
Lizzette Rodriguez]*

Assigned to Hon. John A. Kronstadt
Courtroom 10B

DECLARATION OF JONATHAN M. JACKSON

I, Jonathan M. Jackson, declare as follows:

1. I am an active member of the Bar of the State of California and an associate with Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow, P.C., attorneys of record for Defendant Herbalife International of America, Inc. (“Herbalife”) in this action. I make this declaration pursuant to Local Rule 79-5.2.2(b)(i), in support of Plaintiffs’ Application for Leave to File Under Seal Exhibit 3 to Plaintiffs’ Supplemental Memorandum re: Plaintiffs’ Motion to Compel Discovery (Dkt. No. 291). Except for those matters stated on information and belief, I make this declaration based upon personal knowledge and, if called upon to do so, I could and would so testify.

2. Exhibit 3 was filed in support of a supplemental brief regarding a discovery motion unrelated to the merits of the case. Accordingly, the “good cause” standard applies. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (“[F]or sealed materials attached to a discovery motion unrelated to the merits of a case . . . a party need only satisfy the less exacting ‘good cause’ standard.”).

3. Herbalife does not seek to seal Exhibit 3 in its entirety. Instead, Herbalife seeks only to seal particularly sensitive information within the document. Pursuant to Local Rule 79-5.2.2(b)(i), Herbalife’s proposed redactions to Exhibit 3 are included in Exhibit A to the Declaration of Lizzette Rodriguez (“Rodriguez Decl.”) submitted concurrently. When Plaintiffs’ counsel contacted Herbalife’s counsel regarding the confidentiality of this document, Plaintiffs refused to identify what they intended to use the document for, or even what case they were considering using it for (*i.e.*, this case or the related action pending in the Southern District of Florida). Herbalife asked for this information because the governing protective order only permits the use of confidential documents in the case that is

1 before this Court,¹ and in order to assess the propriety of Plaintiffs’ request to de-
 2 designate the document in light of their stated purpose. *See AFM v. MGM*, 2017
 3 WL 10544625, at *2 (C.D. Cal. Dec. 1, 2017) (Wilner, J.) (explaining that the “lack
 4 of need for these items bears on the Court’s exercise of its discretion” in de-
 5 designating materials produced pursuant to a protective order). Plaintiffs’ counsel
 6 refused to provide even this basic information. As a result, the parties did not
 7 discuss redaction of the document pursuant to Local Rule 79-5.2.2.


8 4. As explained in the Rodriguez Declaration, “good cause” supports
 9 Herbalife’s request to seal this information, and Herbalife’s interest in maintaining
 10 the confidentiality of this information outweighs the public’s right of access, for
 11 multiple reasons. First, Exhibit 3 contains competitively sensitive information that
 12 would cause Herbalife competitive harm if it were made public. (Lizzette Decl.,
 13 ¶¶ 2-6); *United States ex rel. Brown v. Celgene Corp.*, 2016 WL 6542729, at *4
 14 (C.D. Cal. Mar. 14, 2016) (“Courts routinely protect sensitive business and
 15 proprietary information where disclosure would put the producing party at a
 16 competitive disadvantage.”). Second, the public release of this confidential email
 17 exchange would impair Herbalife’s legitimate business interest in obtaining open
 18 and honest feedback from its distributors in a private setting. (Lizzette Decl., ¶ 5.)
 19 Third, Exhibit 3 contains private third party information, including names, phone
 20 numbers and email addresses (as well as the number and password for Herbalife’s
 21 password-protected conference line). (Lizzette Decl., ¶ 7); *Nursing Home Pension*
 22 *Fund v. Oracle Corp.*, 2007 WL 3232267, at *2 (N.D. Cal. Nov. 1, 2007) (“The
 23 Ninth Circuit has found that compelling reasons exist to keep personal information
 24 confidential to protect an individual’s privacy interest[.]”) (citing *Foltz v. State*

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 26 ¹ See Dkt. No. 212 (Stipulated Protective Order), Section 7.1 (limiting use of
 27 confidential materials to “prosecuting, defending, or attempting to settle this
 28 Action”); *id.* at Section 2.1 (defining “Action” as this Central District of California
 action, Case No. 2:18-cv-07480-JAK).

1 *Farm. Mut. Auto Ins. Co.*, 331 F.3d 1122, 1134 (9th Cir. 2003)).

2 I declare under penalty of perjury under the laws of the United States of
3 America that the foregoing is true and correct.

4 Executed this 1st day of December, 2020, at Los Angeles, California.

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7 _____
Jonathan M. Jackson